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Central Intelligence Agency

Washington, D.C. 20505

OIS 87-020

17 FEB 1987

Mr. Robert N. Veeder
Office of Management and Budget
Office of Information and Regulatory Affairs
Room 3235 NEOB
Washington, D.C. 20503

Re: Proposed Fee Schedule and Administrative Guidelines under the Freedom of Information Reform Act of 1986

Dear Mr. Veeder:

Pursuant to your Federal Register Notice of 16 January 1987 concerning the subject matter and on behalf of the Acting Director of Central Intelligence, the comments of the United States Central Intelligence Agency are set forth below.

In ¶6.g., we propose to add a new sentence to reflect what we believe to be sound equitable and fiscal policy as well as consistent with current Department of Justice fee policy with respect to "data brokers" and similar organizations:

> Organizations and data brokers engaged in the business of compiling and reselling United States Government records or information are considered to be commercial requesters.

In ¶6.h., we propose to add the words "degree-granting" between the words "accredited" and "institution" for purposes of clarity and preciseness.

In ¶6.i., we propose to add the following words, also for purposes of clarity and preciseness, at the end of the given definition:

> ... concerning the natural life or physical sciences.

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Lastly, in ¶6.j., we propose to replace the last 17 words with the following in order to ensure that there is, in fact, a valid basis on which to require the taxpayer to fund the costs incurred by the freelance journalist:

> ... provide a statement from an authorized representative of the news organization indicating that the organization will publish the journalist's product.

We believe that these minor changes will serve to clarify the intent of the Congress in passing this legislation and will serve to ensure that the American taxpayer is not unduly burdened by the financial costs incurred by individuals or organizations whose efforts (1) are essentially commercial in nature, and/or (2) will not, in fact, be of significant and tangible benefit to the public.

We appreciate the opportunity to provide our views in this matter. If there should be any questions please do not hesitate to contact me on [redacted] at any time. STAT

Sincerely yours,

[redacted] STAT

Information and Privacy Coordinator

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EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		X		
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11	IG				
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15	D/PERS				
16	D/Ex Staff				
17	D/OIS		X		
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	SUSPENSE _____ Date				

Remarks To # 6: Note requirement in Para # 2, that Regulations must be issued NLT 25 Apr 87.

STAT

Executive Secretary
9 Feb 87
Date

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

87-0433x

FEB 3 1987

AMES
ISC

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Wendy L. Gramm
Administrator for Information
and Regulatory Affairs

SUBJECT: Proposed Guidance on Freedom of Information Act (FOIA) Fees

Attached is a copy of proposed guidance on the establishment of fees under the Freedom of Information Act (FOIA) that we are publishing in the Federal Register for public comment. This guidance was developed pursuant to a requirement in the recently enacted Freedom of Information Reform Act (P.L. 99-570) that the Office of Management and Budget (OMB) issue a uniform schedule of FOIA fees and guidelines. That Act also requires agencies to issue their own implementing regulations in conformance with the OMB issuance.

In view of the fact that your own regulations must be issued in final form no later than April 25, 1987, I urge you to begin the revision process using our proposal as a basis. Even if these guidelines are subsequently altered as a result of comments received, you will be in a better position to meet the statutory deadline by initiating your revisions now.

Please direct any questions you have to Robert N. Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503 (telephone 202-395-4814).

Attachment

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1-16-87
Vol. 52 No. 11

federal register

Friday
January 16, 1987

OFFICE OF MANAGEMENT AND BUDGET

The Freedom of Information Reform Act of 1986 (Pub. L. 99-570); Proposed Fee Schedule and Administrative Guidelines

AGENCY: Office of Management and Budget.

ACTION: Notice and request for public comment on Proposed Guidelines and Fee Schedule implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

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Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on January 27, 1982 (47 FR 3898).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of relief and the issuance of the exemption included in the license will have no significant impact on the environment (52 FR 713, dated January 8, 1987).

For further details with respect to this action, see (1) Facility Operating License No. NPF-63; (2) the Commission's Safety Evaluation Report, dated November 1983 (NUREG-1038), and Supplements 1 through 4; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; and (5) the Final Environmental Statement (NUREG-0972) dated October 1983.

These items are availabale at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610. A copy of the Facility Operating License NPF-63 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A. Copies of the Safety Evaluation Report and its supplements (NUREG-1038) and the Final Environmental Statement (NUREG-0972) may be purchased at the current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or may be ordered by calling (202) 275-2060 or (202) 275-2171, or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 12th day of January, 1987.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Acting Director, PWR Project Directorate #2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 87-1046 Filed 1-15-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

The Freedom of Information Reform Act of 1986 (Pub. L. 99-570); Proposed Fee Schedule and Administrative Guidelines

AGENCY: Office of Management and Budget.

ACTION: Notice and request for public comment on Proposed Guidelines and Fee Schedule implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

SUMMARY: These Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 which require the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

The Freedom of Information Reform Act permits agencies to charge for the direct costs of providing FOIA services such as search, duplication, and, in certain cases, review. OMB has interpreted this "direct cost" provision to mean the actual costs each agency incurs in operating its FOIA program. Since these costs vary widely from agency to agency, consistency with this interpretation requires OMB to provide not a single set of fees for FOIA services to be used by all agencies; but, rather, a set of definitions and procedures that will permit agencies to develop their own rates in conformance with government-wide standards. Thus, for example, each agency will develop charges for duplication using the same criteria to determine what makes up duplication charges. OMB expects that this process will result in the consistent application of FOIA fees across the government—one of the primary goals of the FOIA Reform Act.

OMB invites interested parties to provide comments on this proposal, and especially on the definitions of the following terms:

- "Commercial";
- "Representative of the news media";
- "Educational Institution";
- "Non-commercial Scientific Institution";
- "Search"; and
- "Review."

DATE: Comments must be received before February 17, 1987.

ADDRESS: Send comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, Information Policy Branch, 202-395-4814.

Proposed Guidance

Uniform Freedom of Information Act Fee Schedule and Guidelines

To the Heads of Executive Departments and Establishments:

1. Purpose—These Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) which require the Office of Management and Budget to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

Data from agencies, annual FOIA reports to the Congress as well as studies by the General Accounting Office, and others indicate that inconsistent application of the Act's fee provisions has sometimes resulted in inequitable treatment of users of the Act as well as substantial loss of revenues to the Treasury. While the legislative history of the 1974 amendments to the Freedom of Information Act shows that the Congress did not intend that fees be erected as barriers to citizen access, it is quite clear that the Congress did intend that agencies recover certain of their costs. Therefore, these Guidelines encourage agencies to charge fully for those costs that the statute makes recoverable and provide a schedule of fees and related administrative procedures in order to establish a consistent government-wide framework for assessing and collecting FOIA fees.

2. Scope—These Guidelines apply to all agencies subject to the Freedom of Information Act (see 5 U.S.C. 552(e)).

3. Effective Date—These Guidelines are effective upon issuance in final form.

4. Inquiries—Inquiries should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

5. Authorities—The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 35); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et

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seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et seq.).

6. Definitions—For the purpose of these Guidelines:

a. All the terms defined in the Freedom of Information Act apply.

b. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that enables a government agency, such as the Government Printing Office or the National Technical Information Service (NTIS), to set and collect fees in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

c. The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

d. The term "search" includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (see subparagraph 5f below).

Searches may be done manually or by computer using existing programming.

e. The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

f. The term "review" refers to the process of examining documents located in response to a commercial use request (see subparagraph 5g below) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

g. The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade or profit as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act. In determining whether a requester properly belongs in this category, agencies must look first to the use to which a requester will put the documents requested. Where a requester does not explain his purpose, or where his explanation is insufficient, agencies may draw reasonable inferences from his identity and charge fees accordingly. Thus, for example, agencies would be entitled to presume that a document request written on corporate letterhead stationery that merely recites a list of the documents wanted is for a commercial use.

h. The term "educational institution" refers to an accredited institution of higher learning engaged in scholarly research.

i. The term "non-commercial scientific institution" refers to an independent non-profit institution whose purpose is to conduct scientific research.

j. The term "representative of the news media" refers to any representative of established news media outlets, i.e., any organization such as a television or radio station, or a newspaper or magazine of general circulation, or person working for such organization which regularly publishes information for dissemination to the general public whether electronically or in print. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

7. Fees to be Charged—General. Agencies should charge fees that recoup the full direct costs they incur. Moreover, they shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. Agencies are encouraged to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. Moreover, agencies should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in paragraph 5b above), such as the NTIS, they inform requesters of the steps necessary to obtain records from those sources.

a. Manual Searches for Records—Whenever feasible, agencies should charge at the salary rate(s) (i.e. basic pay plus 16 . 1 percent) of the employee(s) making the search. However, where a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), agencies may establish an average rate for the range of grades typically involved.

b. Computer Searches for Records—Agencies should charge at the actual direct cost of providing the service, including computer search time, runs, and operator salary.

c. Review of Records—Agencies may charge only requesters who are seeking documents for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the initial review; i.e., the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, as opposed to review taken at the administrative appeal level of the exemptions already applied.

d. Duplication of Records—Agencies shall establish an average agency-wide, per-page charge for paper copy reproduction of documents. This charge shall represent the reasonable direct costs of making such copies taking into account the salary of the operators as well the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, agencies shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, agencies should charge the actual direct costs of producing the document(s).

e. Other Charges—It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of the agency. Neither the FOIA nor its fee structure cover these kinds of services. Agencies should recover the full costs of providing services such as those enumerated below to the extent that they elect to provide them:

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(1) Certifying that records are true copies;

(2) Packaging and mailing records rather than holding for pickup;

(3) Sending records by special methods such as express mail, etc.

f. Restrictions on Assessing Fees—With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, agencies would not begin to assess fees until after they had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, an agency would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result.

g. Waiving or Reducing Fees—Section (4)(A)(iii) of the Act requires agencies to furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

8. Fees to be Charged—Categories of Requesters. There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

a. Commercial use requesters—When agencies receive a request for documents appearing to be for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Moreover, when agencies receive a request for disclosure that is primarily in the commercial interest of the requester, the Act does not require them to consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Agencies are reminded that they may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

b. Educational and Non-commercial Scientific Institution Requesters—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters eligible for free search must reasonably describe the records sought.

c. Requesters who are Representatives of the News Media—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. Requesters eligible for free search must reasonably describe the records sought.

d. All Other Requesters—Agencies shall charge requesters who do not fit into any of the categories above fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

9. Administrative Actions to Improve Assessment and Collection of Fees—Agencies shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly by all components. To ensure such consistency and uniformity, agencies should ensure that their agency-wide FOIA regulations are amended to conform to the provisions of these Guidelines and Fee Schedule, especially including the following elements:

a. Charging Interest—Notice and Rate. Agencies should give notice in their regulations that interest may be charged those requesters who fail to pay fees charged. Agencies may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A.

b. Charges for Unsuccessful Search. Agencies should give notice in their regulations that they may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure.

c. Aggregating Requests. When an agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency should aggregate any such requests and charge accordingly.

d. Advance Payments.

(1) Where the agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the agency should require a requester to make an advance payment of the entire fee before continuing to process the request.

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the date of the billing), the agency should require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When an agency acts under subparagraphs (1) or (2) above, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the agency has received fee payments described above.

f. Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). Agencies' FOIA regulations should contain procedures for using the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

10. Agencies, Required Implementing Actions—Section 1804(b)(1) of the Freedom of Information Reform Act requires agencies to issue final regulations in conformance with OMB's schedule and guidelines no later than the 180th day following enactment: April 25, 1987.

James C. Miller III,

Director.

[FR Doc. 87-973 Filed 1-15-87; 8:45 am]

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